

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 07-1
Table of Allotments,)	RM-11356
FM Broadcast Stations.)	
(Hemet, California))	

NOTICE OF PROPOSED RULE MAKING

Adopted: June 6, 2007

Released: June 8, 2007

Comment Date: July 30, 2007

Reply Comment Date: August 14, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. At the request of Southern California Public Radio ("Southern California"), we are proposing to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, to reserve vacant Channel 273A at Hemet, California for noncommercial educational ("NCE") use.¹ In doing so, we are requesting specific comment on whether a rulemaking proponent may use actual terrain pursuant to Section 73.313 of the Commission's Rules² (the "Rules") to calculate first and second NCE service benefits in connection with NCE allotment reservation requests.³

¹ Originally, the Petitions for Rule Making filed separately by Southern California and Maranatha Ministries of Hemet ("Maranatha Ministries") were returned by staff letters dated March 18, 2004. Southern California and Maranatha Ministries each filed a Petition for Reconsideration in response to the staff decisions. Initially, the staff denied reconsideration. *See Hemet, California*, Memorandum Opinion and Order, 21 FCC Rcd 8465 (MB 2006) ("Memorandum Opinion and Order"). Thereafter, on its own motion, the staff issued an *Order* that set aside its action denying reconsideration and requested that each of the Petitioners file an NCE reservation showing prepared in accordance with 47 C.F.R. § 73.313. *See Hemet, California*, Order, 21 FCC Rcd 10037 (MB 2006) ("Order"). Simultaneously herewith, the staff is issuing a *Memorandum Opinion and Order*, granting the Petition for Reconsideration filed by Southern California and dismissing the Petition for Reconsideration filed by Maranatha Ministries. *See Hemet, California*, Memorandum Opinion and Order, DA 07-2390, (rel. June 8, 2007).

² 47 C.F.R. § 73.313

³ The Commission established revised criteria by which a rulemaking proponent may reserve an FM allotment for NCE use. *See In the Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) ("*NCE Report and Order*"); *See also* 47 C.F.R. § 73.202(a)(1). Under the expanded criteria, a proponent must demonstrate that: it is technically precluded from using a reserved channel (Channels 200 through 220); and, that the proposal would provide a first and/or second NCE radio service to at least 10 percent of the population within the 1 mV/m (60 dBu) contour of the proposed station, such population must exceed 2,000 person. Originally, the Commission limited this expanded reservation criteria to future allotment proceedings. The Commission later extended the expanded criteria to existing vacant FM allotments for which a *Notice of Proposed Rule Making* had been released prior to August 7, 2000, the effective date of the *NCE Report and Order*. *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants* Second Report and Order, 18 FCC Rcd 6691 (2003) ("*NCE Second Report and Order*"). In a Public Notice released September 30, 2003, we invited petitions for rule making to reserve vacant FM allotments for NCE use pursuant to the *NCE Second Report and Order*. *See Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, Public Notice, 18 FCC Rcd 19600 (MB 2003) ("*Public* (continued....)

2. Generally, in FM allotment proceedings, our determination as to the area that would receive certain signal strength is based on standard FM propagation signal methodology set forth in Section 73.313(a) of the Rules.⁴ However, in applying this methodology, the staff assumed “uniform terrain.” Based on this methodology, a Channel 273A NCE allotment at Hemet would provide a first and/or second NCE service to only 2.5 percent of the population within the proposed station’s 60 dBu contour. Southern California, however, filed a reservation showing prepared in accordance with Section 73.313 of the Rules, including the use of actual terrain variances between three and sixteen kilometers of the transmitter site. This showing establishes that the Hemet allotment would provide a first and /or second NCE service to 30.9 percent of the population, consisting of more than 2,000 persons within the 60 dBu contour. In accordance with *Woodstock and Broadway*, Southern California has documented that it has reasonable assurance at its proposed transmitter site.⁵

3. We seek comment on our tentative conclusion that the public interest is best served by narrowly expanding the scope by which a NCE reservation proponent may use Section 73.313 and, therefore, actual terrain to calculate the relevant NCE stations contours. Under this limited exception, a reservation proponent would be permitted to use actual terrain values if it demonstrates that it has reasonable assurance of site availability of the specified transmitter site and obtains FAA approval for the required tower at this proposed site in compliance with our *Woodstock and Broadway* policy. This limited expansion of the *Woodstock and Broadway* policy does not alter our FM allotment procedures, which generally do not permit use of actual terrain data because the successful applicant and its proposed transmitter site are determined subsequent to the allotment proceeding. Our tentative conclusion is based, in part, on our view that the actual terrain methodology provides a more reliable measure of NCE service and, thus, will better effectuate the Commission’s goal of promoting NCE service to underserved communities. Moreover, a reserved allotment is conditioned on the construction and licensing of an NCE station that provides the requisite level of first and/or second NCE service under the relaxed reservation policy. In the event that no application for a reserved band allotment proposes such service, the allotment would become unreserved and subject to the Commission’s competitive bidding licensing procedures.⁶

4. We believe that the public interest could be served by requesting comment on this proposal to reserve vacant Channel 273A at Hemet for NCE use. Based upon our preliminary study, Southern California has expressed an interest in applying for this FM allotment reserved for NCE use, is eligible to do so, and has demonstrated compliance with the expanded criteria set forth in the *NCE Report and Order*. We will not entertain counterproposals or any proposal to modify the underlying allotment other than the proposed reservation of this allotment for NCE use. Instead, a party may filed rebuttal comments identifying a site at which a reserved channel could be assigned with facilities fully equivalent to the class of the allotment proposing to be reserved. Such an alternate reserved channel proposal must also satisfy the first and/or second NCE radio service criterion. In addition, a party may file comments demonstrating that

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Notice”). In response to the *Public Notice*, Southern California and Maranatha Ministries each filed a petition, requesting the reservation of vacant Channel 273A at Hemet, California for NCE use.

⁴ See 47 C.F.R. § 73.313(a).

⁵ *Woodstock and Broadway, Virginia*, Memorandum Opinion and Order, 3 FCC Rcd 6398 (1988) (stating that a rulemaking proponent seeking an upgrade of an existing station may use actual terrain data to calculate city-grade coverage if such petitioner has a reasonable assurance of the continued availability of its proposed transmitter site and has obtained FAA approval for the site).

⁶ See *NCE Second Report and Order*, Second Report and Order, 18 FCC Rcd 6691, 6705 (2003)(conditioning reserved allotment on the construction and licensing of stations that provide requisite level of first and/or second NCE service).

the reservation proposal would not, in fact, provide a first and/or second NCE radio service to 10 percent of the area or population within 1 mV/m (60 dBu) contour of the proposed station, or serve fewer than 2,000 persons.

5. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Hemet California.⁷

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Hemet, California	273A	*273A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before July 30, 2007, and reply comments on or before August 14, 2007, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

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8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section

⁷ The reference coordinates are 33-44-44 NL and 116-59-18 WL.

73.202(b) of the Commission's Rules.⁸ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

10. For further information concerning a proceeding listed above, contact Rolanda F. Smith, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

⁸ See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. Section 1.420(d).)

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in 47 C. F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.